

REMARKS

This amendment is in response to the Office Action dated February 28, 2003. Claims 1, 3-5, 7-12, 14-16, 18 and 20 are now present in this case. Claims 19 and 21 are canceled. Claims 1, 12 and 20 are amended.

Claims 1, 3, 4, 7 and 20 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 1,713,341 to Kroemer in view of either U.S. Patent No. 6,024,489 to Fox et al. or U.S. Patent No. 5,741,076 to Cammack and further in view of U.S. Patent No. 318,016 to Onderdonk. Kroemer discloses a consumer sized bag having a slit from an upper aperture to the top portion of the bag. The bag is individually removed from a spindle by the user by grasping a bag from the bottom and pulling the bag from the spindle. The spindle generates a force that opens the slit to permit the spindle to pass freely through the way provided by the open slit. (See column 3, lines 8-18.) The Office Action cites Cammack and Fox as disclosing bags having a continuous perimeter around the aperture. It should be noted that both Cammack and Fox are directed to plastic bags of the type typically used to load consumer sized portions of produce.

In contrast to the cited references, the present invention is directed to a commercial potato shipping container. For example, claim 1 recites *inter alia* " a multi-wall paper bale for shipping bulk quantities of potatoes and configured for use with an automated potato bale-filling apparatus, the paper bale having sufficient size to receive and sufficient strength to retain during shipping a plurality of consumer sized bags of potatoes." As has been previously noted by the applicants, a paper bale is a heavy shipping container. The consumer bags of Kroemer, Fox and Cammack are unrelated to commercial shipping containers.

The applicants have included a declaration under 37 C.F.R. § 1.132. The declarant notes that a bale is a commercial shipping container and indicates that one skilled in the art looking for ways of automating a bale loading process would not look to Kroemer since the consumer bag in Kroemer is totally inappropriate for use as a bale. The declarant further states that polyethylene bags "polybags" described in Fox and Cammack are similar to the consumer sized bags which are loaded into the claimed commercial shipping container recited in claim 1. Furthermore, the polybags described

in Fox and Cammack are unsuitable for use as shipping containers due to undesirable characteristics of polybags and due to the vertical slits illustrated in both references. These vertical slits would allow premature separation of the bag from the wickets thus jamming the automated machinery and causing significant loss of productivity. Accordingly, claim 1 is clearly allowable over the cited references. Claims 3-5 and 7-11 are also allowable in view of the fact that they depend from claim 1, and further in view of the recitation in each of those claims.

Claim 12 is a method claim for manufacturing a commercial potato shipping container and recites *inter alia* "folding a multi-layer piece of paper having elongated first and second free end portions to form an elongated front panel" as well as sealing flaps "to form the paper bale with sufficient size to receive and sufficient strength to retain during shipping a plurality of consumer sized bags of potatoes." As discussed above with respect to claim 1, the references cited in the Office Action are directed to consumer bags and not a commercial shipping container. As discussed in the declaration, one skilled in the art would not look to Kroemer, Fox or Cammack for a solution to the problem of designing a commercial shipping container for use with an automated process, such as recited in claim 12. Accordingly, claim 12 is clearly allowable over the cited references. Claims 14-16 and 18 are also allowable in view of the fact that they depend from claim 12, and further in view of the recitation in each of those claims.

Claims 20 contains a similar recitation to that cited above with respect to claim 1 and is allowable for the reasons discussed above with respect to claim 1. For the sake of brevity, those arguments need not be repeated herein.

The enclosed declaration discusses the inapplicability of Kroemer, Fox and Cammack. One of ordinary skill in the art attempting to design a commercial shipping container for shipping a plurality of consumer sized bags for potatoes would not look to the consumer sized bag of Kroemer or the consumer sized polybags described in Fox and Cammack as providing any teaching applicable in the field of commercial shipping containers.

The accompanying declaration also discusses other secondary indicia of non-obviousness related to the claimed invention. The declarant, who has more than

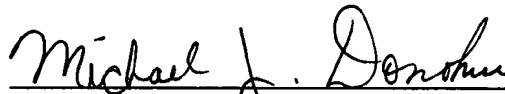
40 years experience in produce shipping, indicated that the shipping industry has had a long felt, but unfulfilled, need for a shipping container capable of use with automated machinery. Although different types of automated machinery have been available and ordinary paper bags and polybags have been around for years, the different attempts to automate the process were not successful until the introduction of the claimed bale. In addition, the declarant indicates that since the introduction of the claimed invention in 2001, virtually all paper bales manufactured in the United States and Canada are made in accordance with the teachings of the pending application. This widespread industry acceptance is yet another indicator of non-obviousness of the claimed invention. Clearly, the industry has long sought but been unable to produce a shipping container for use in automated loading processes. Since the introduction of the claimed invention, a number of different automated machine designs have been developed to make use of the inventive bale (see page 4 of the declaration).

In view of the above amendments and remarks, reconsideration of the subject application and its allowance are kindly requested. If questions remain regarding the application, the Examiner is invited to contact the undersigned at (206) 628-7640.

Respectfully submitted,

Timothy B. Main et al.

Davis Wright Tremaine LLP



Michael J. Donohue
Registration No. 35,859

MJD:gatc

Enclosure:
Declaration

2600 Century Square
1501 Fourth Avenue
Seattle, Washington 98101-1688
Phone: (206) 622-3150
Fax: (206) 628-7699

SEA/I335438_1.DOC 59159-9